

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAKURU

ELRC CAUSE NO. E006 OF 2022
(Before Hon. Lady Justice Anna Ngibuini Mwaure)

MWINYI AHMAD

MWINYIHAJI.....CLAIMANT/RESPONDENT

VERSUS

DAVID LIVINGSTONE LIMITED

T/A MARA RIVER LODGE.....1ST

RESPONDENT/APPLICANT

MR. GOPAL PATEL..... 2ND

RESPONDENT

RULING

Introduction

1. The 1st Respondent/Applicant filed a Notice of Motion dated 19th June 2025 under Certificate of Urgency seeking the following orders that:

1. Spent

2. This Honourable Court be pleased to review the court order issued on the 25th March 2025 that directed the Applicant to provide a bank guarantee.

3. *The court be pleased to direct the Applicant to deposit the sum of Kenya Shillings Three Hundred Thousand (Kshs. 300,000/=) to the court as security*
 4. *The court be pleased to issue such further and other reliefs as it deems fit and expedient in the circumstances.*
 5. *The costs of this Application be provided for.*
2. The application is brought under **Article 159 of the Constitution of Kenya, Order 45 Rule 1, 50 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3A and 80 of the Civil Procedure Act** and all other enabling provisions of the law.

1st Respondent/Applicant's supporting affidavit

3. The application is supported by the affidavit of W. Kevin Michuki, the 1st Respondent/Applicant's advocate.
4. The advocate avers that the Applicant seeks a review of the court orders issued on 28th February 2025, which required them to deposit the full decretal sum by 20th March 2025 to obtain a stay of execution pending appeal.

5. The advocate avers that by a consent dated 18th March 2025, the parties agreed that a bank guarantee of Kshs.1,333,500/= to be deposited by 31st March 2025.
6. The advocate avers that the Applicant was unable to comply due to severe cash flow constraints.
7. The advocate avers that the delay was not intentional, and the Applicant now offers to deposit Kshs.300,000/= as security, emphasizing that the purpose of such security is to ensure performance, not punishment.
8. The advocate urges this Honourable Court to exercise its discretion and extend the stay of execution, arguing that the Respondent will not suffer prejudice and that denying the extension would be unduly harsh.

Claimant/Respondent's Replying Affidavit

9. In opposition to the application, the Claimant/Respondent filed a replying affidavit dated 15th July 2025.

10. The Claimant/Respondent avers that application is bad in law and irregular as it cannot be granted as it contravenes the law.
11. The Claimant/Respondent avers that the court orders from 28th February 2025 were rendered moot by a subsequent consent order dated 18th March 2025, which required the Applicant to deposit a bank guarantee by 31st March 2025.
12. The Claimant/Respondent argues that the binding nature of the consent order renders it unreviewable, and the Applicant's prolonged non-compliance over five months reflects unjustified and persistent delay.
13. The Claimant/Respondent avers that he had suffered significant prejudice, including unemployment and financial hardship, and notes that the Applicant has not paid even the amount they admitted owing during the hearing.
14. The Claimant/Respondent urged this Honourable Court to dismiss the application with costs.

Analysis and determination

15. The court has considered the application, its supporting affidavit and the replying affidavit on record; the issue for determination is whether the application is merited.

16. **Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules 2024** provides as follows:

A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may, within reasonable time, apply for a review of the judgment or ruling—

(a) if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;

(b) on account of some mistake or error apparent on the face of the record;

- (c) if the judgment or ruling requires clarification; or**
- (d) for any other sufficient reason.**

17. In this instant case, this Honourable Court, in its ruling dated 13th June 2025, noted that parties had signed a consent dated 18th March 2025 and the same was adopted as an order of the court as per Ruling dated 25th March 2025. The consent entered into by both parties is binding between them, and now the Applicant wants to go against the said consent. In ***M & E. Consulting Engineers Limited V Lake Basin Development Authority & another [2015] KECA 321 (KLR)***, the Court of Appeal held as follows:

“We concur with the finding of the learned judge that the consent entered into on 2nd April, 2003 was lawful and binding on the parties. It is our concurring view that the judgment sum having been compromised and the compromised decretal sum having been paid, there was nothing to revive or set aside.”

18. In ***Board of Trustees National Social Security Fund V Micheal Mwalo [2015] KECA 782 (KLR)***, the Court of Appeal cited the case of ***Kenya Commercial Bank Ltd V Specialised Engineering Co. Ltd [1982] KLR 485***, Harris J correctly held as follows:

“A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.”

19. In conclusion, this Honourable Court finds that the application dated 19th June 2025 is bereft of merit. There is no justification for review of the court order issued on 25th March 2025 as there is no error or mistake on record and neither is there any new

evidence discovered. The only reason given for the prayer for review of the Court's ruling is that the Applicant is experiencing cash flow shortages.

The court finds no merits in the Applicant's application for review and is dismissed.

20. Costs to be borne by the Respondents.

Orders accordingly.

Dated, Signed and Delivered virtually at Nakuru this 3rd Day of October, 2025.

ANNA NGIBUINI MWAURE
JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and

rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE